30 Monck Street
London
SW1P 2AP

T: 020 7340 0551
E: info@att.org.uk
W: www.att.org.uk

THE TAX ADMINISTRATION FRAMEWORK REVIEW: ENQUIRY AND ASSESSMENT POWERS, PENALTIES, SAFEGUARDS

Response by Association of Taxation Technicians

1 Introduction

1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the HMRC call for evidence 'The Tax Administration Framework Review: enquiry and assessment powers, penalties, safeguards'[1] (the Consultation).

1.2 The primary charitable objective of the ATT is to promote the education and study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.

1.3 Whilst welcoming the intention to overhaul 1) assessment powers, 2) penalties, and 3) safeguards, and recognising that these three areas are interlinked and to some extent interdependent, we still consider that the scope of the Consultation was too ambitious (31 reforming opportunities) to be covered in a 12 week consultation period, especially given the enormity of the challenges. We would have preferred to have seen each of these areas reviewed separately with suitable time and space given to allow for a considered reflection of how each area could be re-envisaged, remodelled, and reformed.

1.4 We welcome that the Consultation is taking place at Stage 1 of the consultation process and appreciate the engagement by HMRC through five workshops to further explore the reforming opportunities. Should the decision be taken to progress any of the proposals further, we look forward to the opportunity provided within Stage 2, to consider the options and comment on the detailed policy design.

1.5 In this response, we have made some general observations in Section 2, followed by detailed responses to the Consultation questions: in Section 3 – Enquiry and Assessment Powers, Section 4 – Penalties and Section 5 - Safeguards. We have grouped our responses where this seemed appropriate.

[1] The Tax Administration Framework Review: enquiry and assessment powers, penalties, safeguards - GOV.UK (www.gov.uk)

2 General Observations

2.1 We support the call in the Consultation for reform of the tax administration framework on tax compliance, and in particular for HMRC to:

- be more transparent with taxpayers;
- provide greater certainty and clarity in legislation and administrative guidance;
- demonstrate fairness by addressing the perceived disparity in treatment between different types of taxpayers; and
- use the wider framework review to support digital reform to build a modern, digital tax system.[2]

2.2 We appreciate that there is a need for HMRC to respond robustly to non-compliance in all its guises, and that this has been one of the major driving forces behind these proposals, but it is essential that any responses are appropriate, proportionate, and fair.

2.3 A patchwork of policies, legislation, and guidance underpins HMRC's ability to administer taxes and duties, and we consider that the current tax administration framework is woefully lacking for a modern, digital, 21st century tax system.

2.4 In our response to 'the tax administration framework: Supporting a 21st century tax system'[3] consultation in 2021, we documented the changing tax landscape over the past 50 years. Nowhere has this been more noticeable than in the intervention work HMRC performs around compliance, where:

- the immediacy and accessibility of the tax authority to taxpayers; and
- in most cases, the associated relative lack of formality in resolution of most issues

has been impacted by:

- the transfer of responsibility for getting tax right from the tax authority to the taxpayer.
- the transfer of HMRC's responsibility for the tax details and records of any taxpayer (and any related decision making) from a specific tax official in a specific tax office (which was often but not always local to their home) to online access by any authorised official (usually in a call-centre) from any HMRC location in the UK;
- the almost complete disappearance of opportunities for taxpayer-initiated face-to-face interaction with the tax authority.
- the increasing reliance by the tax authority on machine-generated communications with taxpayers, including the determination of penalties.
- the increasingly formalised and remote approach to both enquiries and resolution of issues; and
- the prospect of a diminishing role for human beings in the provision of information to HMRC, in HMRC's interrogation of that information, and in HMRC's (virtual) determination of any consequences following such interrogation.

2.5 The changing tax landscape raises the question whether it is now time to retire the Taxes Management Act 1970 and consolidate all tax administration in a new 'fit for purpose' taxes management act? We believe the answer is 'yes' and that having all tax administration legislation in one place would simplify and consolidate the tax code, as well as help taxpayers find the information, they need in one easy and accessible place. Any future changes to the administrational code can then be made to this new taxes

[2] Contained within the Introduction of the Consultation
[3] 210712 The Tax Administration Framework - ATT response WEB.pdf

management act, although we would caution restraint in making too many changes whilst the new act is embedded.

2.6 We think it would have been helpful if this first Consultation had limited its focus to just penalties, rather than shoehorning the small subset of 'financial penalties' into Section 3. This could have provided the opportunity to discuss penalties in a broader context, looking at what part penalties should play in addressing taxpayer non-compliance, and exploring the interaction between, and pros and cons of, financial and non-financial penalties.

2.7 Despite the level of engagement via the workshops, and assurances by HMRC that 'everything is on the table', we are still unsure as to whether the recent reforms to penalties for the late submission of returns and payments introduced into Making tax Digital (MTD) for Value Added Tax (VAT) on 1 January 2023 and its intended extension to MTD for Income Tax Self-Assessment (ITSA), form part of the current review, or part of the proposed solution. We have commented further on these changes below.

3 Responses to questions posed by the Consultation - Enquiry and assessment powers

3.1 Reform opportunity A: consistent powers across tax regimes

3.2 Question 1: What are the potential opportunities, benefits, and risks of moving to a single set of powers across all taxes?

3.3 Question 2: What are the potential opportunities, benefits, and risks of moving to a model that gives greater consistency and alignment to the key assessment and enquiry provisions?

3.4 Question 3: What are your views on any potential costs of changes to assessment and enquiry powers?

3.5 Question 4: Are there any circumstances or taxes where specific enquiry and assessment powers may be necessary?

3.6 One of the main attractions to a single set of powers across all taxes is the simplicity that this would provide for taxpayers, agents and HMRC staff. However, with simplicity there can sometimes be trade-offs around other important tax principles, such as fairness and equity between taxpayers. The key here is to balance the benefits of any simplifying measures with the need to maintain equity and fairness.

3.7 We would support any reforms which produced legislation and obligations which are:

- simply to understand;
- have unambiguous meaning;
- supported by clear guidance; and
- have both call centre and on-line support.

3.8 We have identified 16 different personal and business taxes administered by HMRC (excluding levies and duties such as beer, tobacco and spirits), and notwithstanding our general support for greater consistency and alignment of powers, the ATT does not have sufficient expertise in each of these

taxes/duties to comment fully on whether a move a to single set of powers across **all** taxes administered by HMRC would be feasible or possible.

3.9 As well as there being a number of different taxes administered by HMRC, there are also several different classes of taxpayer, from individuals with straightforward tax affairs through to the self-employed, partnerships, trust, estates and companies (themselves ranging from owner managed companies to large multi-nationals). All of these groups need to understand, use and comply with their requirements. Any decision to align taxes must consider the impact on the taxpayers engaged with those particular taxes, and in particular whether the alignment achieves both simplicity and equity.

3.10 Taxpayers in business will rarely interact with only one tax, and HMRC often undertake tax compliance checks on businesses which cover a number of taxes (VAT, Corporation Tax (CT), Pay as you Earn (PAYE) and National Insurance Contributions (NIC)). For small and medium-sized businesses this was known as a Single Compliance Process (SCP) and allowed compliance visits to be more proportionate, consistent, and straightforward, leading to greater certainty across the whole business for taxpayers and usually incurring less costs than individual tax enquiries. Larger businesses dealt with by the Large Business Service (LBS) and some Local Compliance (Large and Complex) are still assigned a Customer Compliance Manager (CCM), who, whilst their primary role is to make sure the business pays everything it owes, are also experts in their field and will have built up an in-depth knowledge of the business and the sector. This should lead to greater understanding by CCMs of the pressures experienced by taxpayers and provide a point of contact to discuss and resolve complex tax issues.

Whilst these multi-tax initiatives allow HMRC the opportunity to review all the taxes affecting a business at one time, there still remains the fact that each tax has its own assessing powers and safeguards which need to be navigated. Creating powers which are consistent and aligned would make it easier for taxpayers, agents and HMRC staff to understand the powers and processes when undertaking these multi-tax compliance cases.

3.11 Our view is that where a full and detailed examination of a tax has been undertaken, and the results clearly indicate that alignment of the assessment powers, penalties and safeguards are possible with other taxes, then there should be alignment. This should have the effect of creating both simplicity and certainty for taxpayers, as well as having potential cost benefits for taxpayers and HMRC.

3.12 The move to any new system will undoubtably involve additional costs for taxpayers, agents and HMRC, and it is only right that the benefits of a move to an alternative set of powers is fully measured against these costs and any risks posed by the transition. As with any change, there will be the usual costs of re-training and familiarisation. However, if there was a move to a single set of powers across all taxes, then it would mean that the ongoing training requirements for new staff in practice would be simplified, having only to learn one set of powers. There would also be savings for HMRC, as staff dealing with one tax could be redeployed to work on another tax with minimal training on the administrational aspects of the tax.

3.13 Reform opportunity B: aligning powers and addressing gaps

3.14 Question 5: What would be the impact of greater alignment in the examples mentioned?

3.15 Question 6: Are there other potential gaps or mismatches that you think it would be beneficial to address?

3.16 In principle we accept that greater alignment across taxes could create powers which are simpler and easier to understand. It is important to appreciate when considering taxes, that there are significant

differences between annual taxes (i.e. income tax, corporation tax etc) and transactional taxes (i.e. VAT, stamp duty land tax etc). Annual taxes lead themselves to greater alignment across filing deadlines, payment dates and penalties for non-compliance. Transactional taxes can be ad-hoc and whilst some aspects such as penalties for non-compliance could be aligned with annual taxes, we think that it would be more problematic to align payment dates.

3.17 A key aspect of any tax system, aligned or otherwise, is the need for clear, easy to access and understand legislation and guidance. Whilst legislation is usually published before it takes effect, HMRC can often be slow at providing appropriate guidance. We would recommend that guidance is prepared and shared with interested stakeholders for comment well in advance of changes taking effect so that it can be reviewed and considered from the end-user perspective. The final version should then be published prior to the commencement date so that users can become familiar with the new application of the new legislation. Currently, the Government Digital Service (GDS) 'rules' prevent the publication of guidance in advance of new obligations taking effect as they consider this could create confusion for taxpayers. However, this approach prevents taxpayers from planning ahead.

3.18 The Consultation refers to three areas where there are 'inconsistencies' between taxes, and comments were sought on what would be the impact of greater alignment. Our views are as follows:

<u>The absence of consequential amendment provisions for ITSA, as compared to CTSA (Finance Act 1998 schedule 18 paragraph 34(2A)), and</u>

<u>The absence of a discovery determination provision (to remove overstated losses) for ITSA compared to CTSA (Finance Act 1998 schedule 18 paragraph 41)</u>

We appreciate that FA98, sch18 para 34(2A) provides for consequential amendments in situations where say a company has returned a loss for the year and has set this off against the profits of a subsequent period, but after enquiry it is agreed there is no loss, or maybe even a profit. The legislation would permit an amendment to that subsequent period to deny the loss, regardless of whether it was time-barred for enquiry. We also recognise that this facility is not replicated for businesses subject to income tax.

One key benefit offered at the time Self-Assessment was introduced was that taxpayers would have greater certainty in their tax affairs, knowing that once the 'enquiry window' had lapsed, and in the absence of fraud, their tax affairs for that year would be final. Consequential amendments could undermine this certainty.

Whilst accepting that consequential amendments for income tax would bring alignment across income tax and corporation tax, we are not convinced that the case has been sufficiently made to undermine taxpayer certainty by introducing the ability to make amendments outside the 'normal' time limits. If HMRC have concerns regarding the impact that an enquiry may have on other tax years, or other taxes, there is already provision for opening protective enquiries, or where appropriate the use of discovery provisions. We appreciate that this may incur additional time and effort on behalf of HMRC staff, but we consider that this is overridden by taxpayer's need for certainty.

<u>The conditions to make directors personally responsible for unpaid PAYE and NICs liabilities (where it is appropriate to do so) are based on a similar principle, but unlike PAYE where directors can be made jointly and severally liable, NICs liability requires an assessment of the director's culpability and liability can be apportioned between the directors who are individually culpable</u>

We would support the alignment across PAYE/NIC for directors to be made personally responsible (where it is appropriate to do so) on a joint and several basis.

3.19 Reform opportunity C: consequential amendments and assessments across periods and across taxes

3.20 Question 7: What are the merits and risks of HMRC introducing a consequential amendment power across periods and tax regimes?

3.21 We would draw your attention to the comments above at 3.18.

3.22 We are not in favour of any changes which undermine taxpayer certainty, especially when there are existing options available to HMRC (protective assessments, discovery etc).

3.23 Reform opportunity D: conditions for assessment

3.24 Question 8: What are your views on the opportunities and merits of reform in this area?

3.25 The ability for taxpayers to challenge the decision-making rationale of HMRC staff through the tribunal system has always been an important and necessary safeguard. We do not consider that the Consultation provides justifiable reasoning for adopting an alternative or simplified method which ignores this safeguard.

3.26 Given the impact on taxpayers of receiving a discovery assessment (both personally and financially), it is imperative that HMRC staff must have surety of their facts before raising an assessment, and where subjectivity and best judgement are involved, there must be a process whereby the basis of these decisions can be explored, and if necessary challenged.

3.27 The Consultation states that reforms in this area are necessary because of procedural challenges for HMRC issuing assessments where 'taxpayers or agents disclose information in the 'any other information' box of the return in such a way as to make it difficult for HMRC to identify whether an insufficiency of tax may have arisen.'

3.28 We are aware of cases where taxpayers and/or their agents have provided significant amounts of additional information within the 'any other information' box, and can appreciate that this could be a concern for HMRC where the additional information could be seen as an attempt by the taxpayer or agent to obscure the true facts. However, we believe that under a system of Self-Assessment, taxpayers must have the right to include **any** information, no matter how big in size, in their return to confidently sign a declaration that that return contains **all** the information necessary for them to believe that they are making a full and complete disclosure of their tax affairs to HMRC.

3.29 We discuss the issue of assessing time limits further at 4.25

3.30 Reform opportunity E: tailoring HMRC's powers

3.31 Question 9: What are the challenges relating to claims for relief and credits? How should reform to enquiry and assessment powers for reliefs and credits be approached?

3.32 We agree that the recent challenges presented by High Volume Repayment Agents (HVRA) and some Research & Development (R&D) claimants have necessitated HMRC taking a fresh look a how it deals with tax relief and credits to better protect the public and the Exchequer from unscrupulous practices.

3.33 Government action in voiding the assignment of income tax repayments by taxpayers to agents and being more explicit in the Standard for Agents[4] about HMRC's expectations of agents' behaviour in their interactions with repayment clients, has gone some way to addressing abuses in the repayment market. Likewise, R&D claims now require the submission of an Additional Information Form in advance of any claim being made detailing additional supportive information. We accept that more can be done, but HMRC must ensure that any changes to the system still allow appropriate repayments to go to taxpayers in an expedient manner.

3.34 The current Self-Assessment system places the responsibility for checking the validity of a claim on the individual taxpayer. We accept that the 'process now, check later' regime can allow for repayments to be issued quickly, as they are 'processed now' with little oversight, but if this means that repayments are issued without the appropriate checks being made, then any potential over-repayment is going to be clawed back from the taxpayer during the 'check later' process. This does not address the mischief, as often unscrupulous agents (using websites with aggressive advertising and marketing) will exploit unsuspecting taxpayers and 'pocket' a sizeable chunk of any repayment before it is passed to the taxpayer, leaving the taxpayer worried, stressed, and potentially suffering from hardship when HMRC come seeking repayment.

3.35 It seems prudent to consider alternative processes for dealing with claims for relief and credits. The alternative suggested within the Consultation would be the introduction of a grant-type model for processing claims structured around 'an application, decision, appeal' approach. This could allow HMRC to more effectively and efficiently tackle claims that either contain errors or may not be genuine, while still promptly processing and paying legitimate claims. We consider that this option is worth considering further within its own consultation, allowing for the examination of whether there would be any additional complexities because of the change and assessing how it would be introduced and operated.

3.36 Any reforms involving changes to the current system or adopting an 'application, decision, appeal' approach must ensure that repayments are processed, accepted, and paid on a timely basis as many businesses, especially start-up businesses involved in R&D work, rely on these repayments to help fund future cashflow.

3.37 The Consultation also refers to reforming the system whereby taxpayers can reject (with no clear justification) a correction made by HMRC of an obvious error in a return. It would seem sensible to provide an on-line system whereby taxpayers could easily provide the evidence necessary to support a rejection and HMRC can understand the reason for the rejection, thus potentially avoiding additional enquiry work.

3.38 Reform opportunity F: modernising administration and communications

3.39 Question 10: Are there specific issues relating to compliance activity that need to be considered as HMRC moves to greater use of digital communications?

3.40 In March 2021, the then Financial Secretary's foreword to the call for evidence 'the tax administration framework: Supporting a 21st century tax system'[5] referred to the vision of a fully digital tax system able to support all the needs of taxpayers.

3.41 We naturally welcomed this commitment, and we can appreciate the benefits of a comprehensive digital system. However, we think that it is essential to build into any system the capacity for

[4] HMRC standard for agents - GOV.UK (www.gov.uk)
[5] The tax administration framework: Supporting a 21st century tax system (publishing.service.gov.uk)

conventional human contact (initiated by either the taxpayer or HMRC) to resolve issues more effectively for the benefit of taxpayers, the tax authority or both. Nowhere is this more appropriate than in the highly emotive area of tax disputes and resolution.

3.42 It is critical HMRC build trust and credibility in their digital services by not introducing anything approaching 'digital by default' until the digital services which taxpayers will have to use have been thoroughly tested and are supported by guidance and available telephone support for users.

3.43 HMRC must fully test new systems and processes in order to produce a tax system which is effective and efficient for taxpayers, their agents and HMRC. The systems developed to implement a number of recent policy changes (for example, the VAT registration service, CGT on UK Property Service, the Trust Registration Service, the introduction of the agent-client digital handshake and MTD for VAT) have each caused problems for all three groups.

3.44 All new policies should consider the existing and potential future frameworks of HMRC's systems and how the policy will integrate into these without introducing more complexities for taxpayers (and their agents) and HMRC staff.

3.45 The Government set aside funds of £68m in the 2021 Budget[6] for HMRC to develop the Single Customer Account (SCA) and will now provide 'new digital services for customers' allowing taxpayers an effective and efficient means of communication. Unless these funds are ring-fenced, and HMRC provide the time and resources necessary to develop them, there is the potential for all these resources to be applied elsewhere. This is especially significant as HMRC continue to grapple with and address its poor service levels.

3.46 A number of taxpayers, especially those with more complex tax affairs, delegate most or all their tax compliance obligations to a professional agent. Agents are often best placed to identify issues early with their clients' tax affairs, and we would like to see agents copied on all correspondence sent from HMRC to their clients. With the increased use of digital services, the additional cost of agent copies should be negligible if HMRC's systems are intelligently designed to accommodate agents. As well as being copied into all correspondence, agents should have access to all digital systems that taxpayers have access to ie the agent should be able to see and do everything the client can.

3.47 If HMRC is to move to a greater use of digital communications in compliance activities, it is vital that its IT systems can support those efforts, and that HMRC staff are suitably trained. One current area of frustration for agents is HMRC staff's inconsistent use of its email protocol. Of course, HMRC must take account of privacy and confidentiality concerns, and be certain (as far as possible) of the identity of those they are communicating with electronically, but feedback is that at times HMRC staff appear to be using the need for this client authorisation as a means to delay and frustrate the compliance process and avoid providing information to agents necessary to deal with their clients' tax affairs.

4 Responses to questions posed by the Consultation - Enquiry and assessment powers - Penalties

4.1 Tax penalties are seen as having two primary roles: deterrence, and to signal to compliant taxpayers that the system is fair.

[6] Speech to HMRC virtual stakeholder conference - GOV.UK (www.gov.uk)

4.2 In February 2015, HMRC published 'HMRC Penalties: A Discussion Document'[7] recognising five broad principles that HMRC consider should underpin any new penalty regime. We agree with those principles and repeat them here:

1. The penalty regime should be designed from the customer perspective, primarily to encourage compliance and prevent non compliance. Penalties are not to be applied with the objective of raising revenues.

2. Penalties should be proportionate to the offence and may take into account past behaviour.

3. Penalties must be applied fairly, ensuring that compliant customers are (and are seen to be) in a better position than the non-compliant.

4. Penalties must provide a credible threat. If there is a penalty, we must have the operational capability and capacity to raise it accurately, and if we raise it, we must be able to collect it in a cost-efficient manner.

5. Customers should see a consistent and standardised approach. Variations will be those necessary to take into account customer behaviours and particular taxes.

4.3 The challenge in reforming (and simplifying) the penalty system is to ensure that the right balance is achieved across all five principles, whilst recognising that there may be conflicts.

4.4 As a general comment, we fully support a modern tax administration system which seeks to prioritise informing and educating taxpayers of their tax obligations over penalising them.

4.5 As referred to in our general observations, we are disappointed that the Consultation only considers reforms to 'financial' penalties, and there may have been the opportunity to discuss penalties in a broader context, looking at what part penalties should play in addressing wrongdoings, and exploring the interaction between, and pros and cons of, financial and non-financial penalties.

4.6 Reform opportunity G: aligning penalties across tax regimes

4.7 Question 11: Which types of non-compliance do you think should have common penalties applied consistently across HMRC's tax regimes?

4.8 Question 12: Are there tax regimes where a differentiated approach to certain penalties may be needed?

4.9 We agree that financial penalties within the UK tax system can be grouped into three broad categories:

- penalties for failing to meet a time-bound obligation, such as submitting a return or making a payment on time, which are typically automatically applied.

- penalties that vary according to the behaviour that led to the non-compliance, for example, the behavioural penalties for failing to notify liability to tax and making inaccuracies in returns and documents.

- penalties for failing to meet regulatory obligations such as failure to keep records or not complying with a statutory requirement, for instance by handling goods subject to unpaid excise duty.

[7] HMRC Penalties: A Discussion Document - Summary of Responses (publishing.service.gov.uk)

4.10 We consider that there is scope for common penalties for failing to meet a time-bound filing obligations to be standardised and aligned across all taxes. If the date on which something is due is clearly communicated to taxpayers, then it should be possible to create a common penalty system for failure to meet that date.

4.11 The recently reformed late submission and late payment penalties for VAT penalise the small minority who persistently do not comply with their obligations, whilst being more lenient on those who make the occasional slip up. The reforms were introduced after much consultation and have overall been well received by taxpayers and agents. Plans are already in place to extend these reforms to ITSA. We would support reforms created on this basis and their extension to other taxes.

4.12 However, even with time-bound filing obligations there are areas where the questions of proportionality and fairness might still need to be considered. For instance, should the penalty be the same for filing dates which are monthly, quarterly, annually and/or transaction driven (such as Stamp Duty Land Tax)? Regularly missing a frequent filing date could very quick lead to significant penalties compared to missing an annual or ad-hoc filing date. This is addressed in the VAT system, whereby penalty thresholds depend on filing frequency. One area that might cause confusion is keeping track of different penalty totals and thresholds for different taxes.

4.13 The penalties that vary based on the behaviour that led to the non-compliance are briefly discussed at 4.56.

4.14 We note that none of the questions within the consultation appear to specifically address penalties for failing to meet regulatory obligations. We do not have insight into penalties for handling goods subject to unpaid excise duty, so are unable to comment on those regulatory obligations. In relation to penalties for failure to keep adequate accounting records, our members inform us that they rarely see these penalties being issued in practice. This is possibly due to the fact that HMRC's internal guidance Enquiry Manual at EM4650[8] states that 'in the majority of cases where the taxpayer has failed to keep adequate records and where, as a result, we have brought to light offences under TMA70/S95 or FA98/SCH18/PARA20, it will be sufficient simply to continue to reflect those failures in calculating the level of penalties you consider to be appropriate.' We would recommend that all penalties are reviewed to assess whether they continue to meet the policy object when introduced. If they are not meeting those objectives or are not being used, we would recommend that they are removed from the tax code.

4.15 In summary, we support penalty alignment and consistency, but the rationale for the current penalty structure around a particular tax needs to be identified, and then the impact of any changes to that structure assessed and clearly understood to avoid unforeseen consequences.

4.16 Reform opportunity H: simplifying individual and related penalties

4.17 Question 13: Are there particular penalty regimes you think should be simplified? We would welcome views on why and how such penalty regimes might be reformed.

4.18 Question 14: What are the potential benefits and challenges of moving away from the current set of behavioural penalties? What alternative models should be explored?

[8] EM4650 - Penalties: Failure to Keep or Preserve Records: Approach - HMRC internal manual - GOV.UK (www.gov.uk)

4.19 One significant way in which penalties can be simplified is by alignment, and we would draw your attention to our responses to questions 11 and 12 above.

4.20 Penalties are applied to encourage taxpayers to comply with their obligations, to function as a sanction for those who do not and to reassure the compliant majority that they will not be disadvantaged by those who do not play by the rules. It is important that any penalties are assessed against the five principles set out in 4.2.

4.21 The Consultation recognises that one alternative to the current system of understanding taxpayer behaviour, would be for penalties for inaccuracies to be based on a taxpayer's level of co-operation in putting things right and their history of making inaccuracies in past years, with no behavioural element, such that the penalties would increase for each instance where inaccuracies have been identified in previous returns in the last four years.

4.22 HMRC consider that this approach could be easier and quicker to administer, resulting in shorter compliance checks, as HMRC would not need to seek evidence of the behaviour and intentions that led to the inaccuracy.

4.23 Whilst accepting that the system put forward in 4.21 could be easier and quicker to administer, we consider that if it were to be adopted, it would still lead to the need for subjective decision-making, but rather than around underlying behaviour it would be around a taxpayer's level of co-operation. It would also be essential that taxpayers are kept informed of when an escalation period starts and the actions that would need to be taken for any penalty escalations to be reset.

4.24 Our main objection to removing behavioural penalties is that it is effectively treating those making a genuine mistake the same as those effectively going out of their way to evade tax. If they show the same level of cooperation would they have the same penalty? If so, how is that fair?

4.25 One area where there is complexity is in the assessing time limits across the various taxes and duties. There has been some alignment across the main taxes, but more could be done.

4.26 At present there are four main time limits in which HMRC can issue assessments, being:

- 4 years from the end of the relevant tax period,
- 6 years (for careless behaviour) from the end of the relevant tax period,
- 12 years (for offshore matters) from the end of the relevant tax period, and
- 20 years (for deliberate behaviour) from the end of the relevant tax period

4.27 We consider that there is scope to simplify these time limits to just:

- 6 years from the end of the relevant tax period,
- 20 years (deliberate) from the end of the relevant tax period

4.28 Extending the four year limit out to six years would eliminate the need for HMRC to demonstrate 'careless' behaviour for that additional two year period. 'Carelessness' itself is a subjective area and often involves the need for litigation, so this could also have the added benefit of taking pressure off the tribunal and courts system.

4.29 The ability to suspend penalties should be provided within this revised six year period. Other options for suspended penalties are considered at 4.34 et seq.

4.30 Coupled with extending this four year limit to six years should be a similar increase in the ability for taxpayers to claim overpayment relief – currently capped at four years. This would provide consistency and fairness, and limit the number of time limits that taxpayers need to be aware of.

4.31 The 12 year offshore time limit only applies for IT, CGT, and IHT involving offshore matters or offshore transfers. The 12 year limit was bought in to allow HMRC more time to establish the facts in offshore cases. However, since then there have been a number of offshore reforms, including:

- The automatic exchange of information
- The Common Reporting Standard
- The civil sanctions for offshore evaders
- The criminal offence for offshore evasion
- The Requirement to Correct

As HMRC now have both the ability to receive information from other jurisdictions and the sanctions to penalise serious non-compliance, it is arguable that a revised six year time limit should be sufficient time for HMRC to establish the facts in innocent and careless cases. They would still have the 20 year limit available for omissions caused by deliberate behaviour.

4.32 **Reform opportunity I: reforming the use of penalty suspension**

4.33 **Question 15: What alternatives to the current model of penalty suspension do you think should be explored?**

4.34 We acknowledge that compliance work is both expensive and time consuming for taxpayers, agents and HMRC, and action designed to support taxpayers to deliver accurate returns to HMRC are preferrable to enquires into inaccurate returns. We support the policy objective for suspended penalties as set out in the Compliance Handbook at CH83115[9] to 'turn a sanction into an incentive to comply voluntarily'.

4.35 The main issue that we come across from members in relation to suspended penalties is not that they find the system complex, or that it is an outmoded way of encouraging and supporting future compliance, but rather that HMRC staff demonstrate a lack of consistency in the application of suspended penalties, often rejecting that SMART [10]conditions are possible, especially for one-off errors.

4.36 This feedback from members is disappointing given the Compliance Handbook advice to compliance officers at CH83131[11] that 'You **must** consider suspension for **every penalty for a careless inaccuracy**' [our emphasis].

4.37 It is our view that if behavioural penalties are to remain part of the reformed tax administration framework, then HMRC staff must be fully trained in the appropriate use of suspended penalties. HMRC staff should accept and understand that the policy objectives of encouraging and supporting future taxpayer compliance is the right outcome for the taxpayer, HMRC and the Exchequer.

4.38 If penalties are to be suspended, and appropriate SMART conditions attached to the suspension, then it is essential that HMRC invest the resources to ensure that they can monitor compliance with those conditions. Without an effective monitoring process there will always be the possibility that the taxpayer

[9] CH83115 - Penalties for inaccuracies: how to process the penalty: suspension of a penalty: policy objective - HMRC internal manual - GOV.UK (www.gov.uk)
[10] SMART – Specific, |Measurable, Attainable, Realistic and Targeted
[11] CH83131 - Penalties for inaccuracies: how to process the penalty: suspension of a penalty: circumstances in which you might suspend a penalty: overview - HMRC internal manual - GOV.UK (www.gov.uk)

will not improve their standards and the opportunity to create a fully compliant taxpayer will have been lost.

4.39 The maximum suspension period allowed by law is two years, but HMRC acknowledge that normally it would be less than this. We would support suspension periods of greater than two years if adherence to the SMART terms is actively monitored and results in increased taxpayer compliance.

4.40 One possible alternative to suspended penalties for 'careless' inaccuracies is not to charge a penalty at all for 'careless' but to make the penalties for 'deliberate' behaviour more severe. As stated above, penalty suspensions are designed to turn a sanction into an incentive to comply voluntarily, recognising that whilst not being an innocent error the actions which lead to the inaccuracy fell well short of being deliberate. HMRC could instead of charging the penalty issue a 'must improve' letter setting out what actions the taxpayer needs to undertake to mitigate the careless action in the future (akin to the SMART conditions). The letter could also explain that any future, similar careless inaccuracies resulting from not taking the appropriate action in the 'must improve' letter could open the taxpayer up to higher deliberate penalties. The legislation on deliberate penalties could be amended to include both deliberate action and where a taxpayer has previously received a 'must improve' letter.

4.41 Reform opportunity J: proportional fixed penalties

4.42 Question 16: What merits and challenges would making fixed penalties more proportional to a taxpayer's income, resources, or tax liability present? Are there other models that should be considered?

4.43 This reforming opportunity is looking only at 'proportional' fixed penalties for individuals, as supported in the question (…proportional to a taxpayer's income …). This would seem to only address penalties that were based on time-bound obligation referred to at 4.9.

4.44 Previous consultations on penalties have indicated that an ideal penalty system is one that is:

- simple
- flexible
- proportionate
- appropriate and tailored
- a system in which penalties are only issued where they are deserved

4.45 Having different rules for different categories of penalties does not seem to meet the principles of simplification and could lead to a lack of trust in the tax system and a sense of unfairness and injustice.

4.46 Penalty systems have potential tensions that exist between having a proportionate and fair system for individual taxpayers, whilst ensuring a consistent and standardised approach. Taking the £100 Self-Assessment (SA) late filing penalty as an example, as a fixed penalty it is simple, clear, and effective in encouraging compliance up to a certain level. The additional daily penalties for further delays helps to differentiate between short and long periods of delay. However, as indicated in the Consultation, the £100 rate can be seen as being an insufficient deterrent to encourage compliance. The alternative would be either a higher fixed penalty or a penalty based on the taxpayer's income or resources.

4.47 We are not in favour of penalties that are based on a taxpayer's income and would caution against any penalty which was based on taxpayer 'resources', which is ill-defined. Part of our reasoning is that if a taxpayer fails to submit a return on time under this system, at what stage would HMRC raise the

penalty? If HMRC waited until the return was filed, then this might mean waiting months possibly even longer (especially if there was nothing to compel the taxpayer to submit the return) before the income is known on which the penalty would be raised. The alternative would be (at some stage) to raise an estimated penalty assessment, but on what basis? Using last year's submitted return? How long would/should HMRC wait to raise the estimated assessment? one month, one year? Any estimated assessment is likely to be appealed against taking up precious tribunal time, and an application would probably be made for the penalty amount to be postponed pending computation of the correct figure.

4.48 We believe that consideration could be given to raising the fixed penalties to amounts that would create acceptable levels of compliance and deter non-compliance. This might require commissioning research to gauge at what level taxpayers consider that a particular penalty needs to be levied to change their behaviour. In order for the penalty to be seen as proportionate and fair, the penalty could be capped at the higher of the actual tax liability and the new fixed penalty amount, but could also include a lower minimum penalty below which the penalty would not be reduced, thus recognises that there should be some financial penalty for failing to comply with a statutory deadline. This would be appropriate in systems where financial penalties are seen as being the right way forward to encouraging compliance.

4.49 Reform opportunity K: penalty escalation for continued non-compliance.

Reform opportunity L: penalty escalation for repeated non-compliance

4.50 Question 17: Do you agree that penalty escalation could help to address instances of continued and repeated non-compliance? What challenges could this present?

4.51 Question 18: Are there particular models of penalty escalation you think should be considered, and why?

4.52 If we accept, as stated in 4.1, that tax penalties have two primary roles: deterrence and to signal to compliant taxpayers that the system is fair, then penalty escalation would appear to support both these aims, providing an opportunity to differentiate between first time and repeat offenders and strengthen the deterrent effect over time.

4.53 However, the principle of fairness is not always compatible with that of simplicity - both of which are key aims of Government when making policy changes to the tax system, and in its intended treatment of taxpayers. In his article for Tax Journal (issue 1638 10 27 October 2023) HMRC's Director General, Customer Strategy and Tax Design, Jonathan Athow stated 'simplification is just one objective for the tax system which needs to be considered alongside other priorities, such as fairness, tackling the tax gap or supporting wider government priorities.' He went on to say that HMRC would seek to 'explore how we can mitigate the impacts of any additional complexity on taxpayers, including through clear and easy to use guidance'.

4.54 We agree that the provision of clear and easy to use guidance is essential to any change. We would go further though and say that this guidance needs to be accompanied by early communication of the changes, preferable supported by practical and relevant examples.

4.55 As stated within the Consultation, the recently introduced penalty points system for late VAT submissions is one example of penalty escalation, where one-off failures do not attract penalties, but repeated non-compliance does. Overall, our members have found these changes useful and the supporting guidance helpful. We recommend that HMRC continue to develop any penalty escalations along these lines.

4.56 There is a form of reverse penalty escalation built into the current penalty system for penalties based on the behaviour that led to the non-compliance, such as penalties for failure to notify, as the quality of disclosure plays a significant role in the level of the penalty. The more that a person 'tells, helps, or gives access' to HMRC, the greater the reduction in the penalty, so those who are obstructive and uncooperative with HMRC suffer greater penalties than those who seek to work with and accommodate HMRC. We would support penalty systems which continue to provide penalty 'discounts' and recognise the differing levels of co-operation and engagement.

4.57 **Reform opportunity M: designing new penalties to discourage undesirable behaviour**

4.58 **Question 19: Are there specific behaviours and situations that you think penalties could help to address, and why?**

4.59 We think that adding the need for HMRC to consider whether culpability lay (more) with the taxpayer, or the adviser would unnecessarily complicate the whole penalty process. It could also mean that some taxpayers might take less care in questioning their advisers about a particular course of action on the basis that they could side step their primary responsibility by shifting the blame to their advisers. However, where an adviser has clearly given incorrect advice, this should be taken into consideration when considering whether there should be a penalty.

4.60 HMRC are currently consulting on 'Raising Standards in the Tax Advice Market'[12], and the outcome of that consultation is bound to have an impact on addressing 'undesirable behaviour' in the tax advice market.

4.61 Members of the ATT who are working in practice as agents must already comply with our Professional Rules and Practice Guidelines (PRPG)[13], as well as adhere to the Professional Conduct in Relation to Taxation (PCRT)[14] guidance, and the HMRC Standard for Agents[15]. A client who is dissatisfied with the conduct or standard of service provided by a member in practice can raise a complaint with the independently established Tax Disciplinary Board (TDB)[16]. If the complaint is upheld, the TDB has an array of sanctions that it can impose leading up to expulsion from the ATT. We consider that there are already sufficient rules which members in practice must adhere to and sanctions to address misconduct and bad practice, that there is no need for additional sanctions from HMRC.

4.62 **Reform opportunity N: modernising administration and communications**

4.63 **Question 20: Where could HMRC communicate in a more timely or effective manner with taxpayers about penalties?**

4.64 We acknowledge that having to use several IT systems means that HMRC has little consistency in processing the administration of penalties, with each penalty varying depending on the system being used. Those systems which still involve HMRC issuing a written penalty assessment letter to the taxpayer's last known address and dealing with appeals manually are woefully outdated, and are not in keeping with the concepts of a modern digital 21st century tax system.

[12] Raising standards in the tax advice market: strengthening the regulatory framework and improving registration - GOV.UK (www.gov.uk)
[13] Professional Rules and Practice Guidelines | The Association of Taxation Technicians (att.org.uk)
[14] Professional Conduct in Relation to Taxation | The Association of Taxation Technicians (att.org.uk)
[15] HMRC standard for agents - GOV.UK (www.gov.uk)
[16] Home - The Taxation Disciplinary Board (tax-board.org.uk)

4.65 Modernising these systems and processes could offer the potential to improve awareness of penalties, support their effectiveness, and reduce costs for taxpayers, agents, and HMRC. We would support any efforts that could deliver timely, digital communications about penalties and interest to taxpayers, and provide them with details of how they can reduce or avoid them.

4.66 On delivery, HMRC should consider using all means of communication with taxpayers especially texts, emails, and the use of the Single Customer Account. HMRC could take more initiative with taxpayers by sending them prompts via texts or emails that there is an impending actionable deadline and remind them of what needs to be done and what the ramifications would be if the action were not taken.

4.67 Reform opportunity O: regular uprating of fixed penalties

4.68 Question 21: Would you support the regular uprating of fixed penalties for inflation? What challenges would this present for you?

4.69 We accept that without some form of uprating for fixed penalties there is the potential for the amount to no longer meet the policy objectives when they were introduced. We would in principle support regular (possibly every five years) increases to all fixed penalties to reflect inflationary changes.

4.70 It must be made clear to taxpayers and agents when penalties would increase, for instance by providing clear guidance to taxpayers that penalties will be increased on say 1/6 April 2032, and every five years thereafter. We use the date of 2032, partly in recognition that any changes under this Consultation will take a number of years to implement, but also because this would align the increase date with the revaluation dates for Annual Tax on Enveloped Dwellings (ATED) which agents particularly would be aware of, thus providing some consistency as to when there are periodic changes.

4.71 Reform opportunity P: transparency.

We agree with research which suggests that penalties provide a more effective deterrent when they are seen to be applied and enforced. We would therefore encourage HMRC to take every opportunity to continue to promote and publicise its anti-avoidance and evasion work.

4.72 HMRC already have powers which will allow it to publish information about tax avoidance schemes, promoters, enablers, and suppliers where it has:

- allocated a Scheme Reference Number (SRN) to the tax avoidance scheme under the Disclosure of Tax Avoidance Scheme (DOTAS) rules
- given a stop notice to the promoter telling them to stop promoting the tax avoidance scheme, or where the promoter is the recipient of a monitoring notice, under the Promoters of Tax Avoidance Schemes (POTAS) rules, or
- issued a penalty to an enabler under the Enablers of Tax Avoidance (Enablers) rules
- a suspicion that a scheme involves tax avoidance under the publishing legislation in the Finance Act 2022 (the '2022 legislation')

However, the legislation across the various schemes is not consistent in the length of time that HMRC can publish the details of the offending parties. Under DOTAS, POTAS and the 2022 legislation, here there is no time limit for how long information can be published for and remain on the list. Whereas for a SRN or enabler, information about the promoter/enabler/other persons will be held on GOV.UK for a maximum of 12 months. It would make sense for all information to remain on the list and be removed only where the information is no longer helpful to taxpayers in identifying the risks associated

with those schemes i.e. the scheme is no longer being marketed or the business has ceased to trade. These powers should continue to be widely promoted.

5 Responses to questions posed by the Consultation - Safeguards

5.1 Reform opportunity Q: aligning how appeals are made.

Reform opportunity R: aligning payment requirements

5.2 Question 22: What are the merits and challenges of aligning the appeals process with either the direct or indirect taxes approach?

5.3 Question 23: Are there other examples of appeals processes for direct and indirect taxes that could be considered as an alternative approach and why?

5.4 Question 24: What are the merits of aligning payment requirements across regimes where a liability is disputed, and a tribunal appeal is made?

5.5 Question 25: Are there specific circumstances where you think the existing differences across regimes are important or desirable to maintain?

5.6 When comparing direct taxes (say income tax) with indirect taxes (say VAT) an important distinction is that most direct taxes are annual taxes based on income and gains whereas most indirect taxes are transactional taxes that can take place at any time.

5.7 This distinction is important as some annual direct taxes can produce 'dry' tax charges whereas it is unusual for transactional based taxes (excluding Stamp Duty Land Tax) to create a tax charge where the funds have not already been received. This was presumably the rationale why for direct taxes a taxpayer who appeals against a decision may ask for the payment of the amount of tax to be postponed until the appeal is settled, whereas in cases concerning indirect taxes, before the tribunal may hear a taxpayer's appeal, any securities or disputed tax must have been paid to HMRC.

5.8 Although there are these distinctions between direct and indirect taxes, which cannot be ignored, we would be in favour of alignment of the appeal processes, so that the appeal processes can be straightforward to use and easy to navigate.

5.9 If direct and indirect tax appeals are to be aligned, we would favour alignment along the direct tax route. Any form of appeal is expensive both for taxpayers and HMRC, so the more opportunities to resolve and settle a case before involving costly litigation would seem sensible. Direct tax cases provide multiple opportunities for resolution. Alternative Dispute Resolution (ADR) can be used at various stage of the process and Statutory Review (SR) once a decision has been made is another useful option to avoid litigation. HMRC's Litigation and Settlement Strategy[17] support the collaborative working between taxpayer/agents and HMRC recognising that 'this is likely to be the most effective and efficient approach' and requires all parties to be open, transparent, and focused on resolving the dispute.

5.10 We would also support alignment along the direct tax route for payment requirements across regimes where a liability is disputed, and a tribunal appeal is made.

[17] Litigation and Settlement Strategy (LSS) - GOV.UK (www.gov.uk)

5.11 Reform opportunity S: improving access to ADR and statutory review

5.12 Question 26: How can HMRC improve access to statutory reviews and ADR? Are there ways to encourage voluntary take-up of these you think we should explore and why?

5.13 Question 27: What are the merits and challenges of increasing take-up of statutory reviews and ADR with a 'recommendation and opt out' approach?

5.14 ADR involves an HMRC mediator who has been trained in mediation skills and techniques collaborating with taxpayers/agents and the HMRC officer dealing with the case to explore ways to resolve the dispute.

5.15 An SR is undertaken by a review officer within the Solicitor's Office and Legal Services (SOLS) business area of HMRC. Review officers are independent of the original decision-maker and act as a second pair of eyes when reviewing the tax decision. They can uphold, vary, or cancel the original tax decision. If the customer, or their tax agent, disputes the outcome of a statutory review, they can still appeal to the Tribunal.

5.16 Both ADR and SR can provide taxpayers with a timely and cost-effective way of challenging decisions made during and after a compliance review, thus avoiding the need to engage the tribunal system. Whilst both processes seek to resolve matters without the need to go to tribunal, they both have quite different challenges when looking to improve access and take-up.

5.17 There is now greater advertising and promotion of ADR and SR, and it was encouraging that members from both the ADR and SR teams last year presented on-line webinars to ATT and CIOT members via our branch network. But whilst recognising that much has been done in this area, there is still a lack of awareness and understanding around ADR by both taxpayers and agents. We would recommend that HMRC continue to advertise and promote the types of disputes that can be considered for ADR, together with at what stages in the dispute process it can be used, and how to apply and use the process.

5.18 A major drawback in the take-up of ADR is the fact that there are still too many areas in which ADR is not possible. Increasing the scope and breadth of cases that can be considered within ADR could increase the use of the service by taxpayers and agents.

5.19 Most ADR work is now undertaken online and there must be a compelling reason for the meeting to be held in person. The feedback that we receive from members is that they would prefer ADR meetings to take place in person. Video meetings can present communication challenges at various levels. There can be technical issues which interrupt the meeting and interfere with effective communication. People who are connecting from different geographical locations would be more likely to experience this kind of disruption due to differences in bandwidth and Internet speed. The lack of non-verbal cues from body language can also negatively affect communication. Cultural anthropologists believe that gestures, posture, and body movements help us make sense of up to 70% of conversations, and this is lacking in online meetings. Whilst recognising the obvious costs savings of holding a meeting online, we would recommend that where there is a request for ADR to take place in person, that the request is accommodated.

5.20 At the end of 2021 HMRC commissioned a research report on Understanding perceptions of the statutory review process[18]. Under section 5 of that report the authors made suggestions as to 'how to

[18] Research report on Understanding perceptions of the statutory review process

encourage take-up of statutory reviews'. We would encourage HMRC to revisit the findings of the report and consider how it can further implement the recommendations.

5.21 An important benefit of ADR for taxpayers even when disputes between themselves and HMRC cannot be fully resolved is that it can still be a useful medium for agreeing the facts and narrowing the scope of the dispute, so that any subsequent Tribunal hearing is briefer and less costly. Equally, SR can allow a 'second pair of eyes' and sense check the logic of the original findings.

5.22 Reform opportunity T: mandating statutory reviews in certain circumstances

5.23 Question 28: What are your views on the possibility of mandating statutory reviews in certain circumstances?

5.24 Question 29: Are there specific circumstances where you think it would be appropriate or inappropriate to mandate statutory reviews?

5.25 The Consultation indicates that 'in 2022/23 the tribunal notified HMRC of 12,332 new First-tier Tribunal appeals, of which approximately 14% related to late payment or late filing penalties and surcharges', and a way to free-up tribunal time would be consideration of 'mandating statutory reviews for certain cases'. The current tribunal system is under immense pressure and clearly unable to deal on a timely basis with its workload. Removing those simple cases involving late payment and late filing would seem a sensible way to alleviate some of those pressures.

5.26 We do not consider that a justifiable position has been put forward in the Consultation for mandating statutory review 'in cases where the taxes in dispute are under £10,000'. Firstly, creating a two-tier system for the same type of dispute based purely on the financial amount involved seems to go against HMRC's Charter standard of 'treating you fairly', as different taxpayers would be offered different appeal options. Secondly, the amount of £10,000 impacts different classes of taxpayer in different ways, as referred to when considering the concept of proportionality earlier. It is hard to reconcile this approach with HMRC's Charter standard of 'being aware of your personal situation', where a dispute that has a potentially meaningful financial impact on a taxpayer is denied full access to the tribunal system.

5.27 The gov.uk page on 'Use Alternative Dispute Resolution (ADR) to settle a tax dispute'[19], indicates 14 situations where taxpayers are currently unable to use the ADR process. This includes disputes over default surcharges and automatic late payment or late filing penalties. Therefore, Government should look to include within the ADR process as many of these situations as is appropriate. If default surcharges and automatic late payment or late filing penalties were brought within the ADR process, then this would at least give taxpayers and HMRC staff the ability to request/offer ADR. We would then suggest that HMRC monitor the number of cases being requested/offered so that it can be established whether providing access to the ADR process itself is sufficient to reduce cases going to tribunal.

5.28 If the ADR process is available in more situations, it is essential that the ADR team are properly resourced, and appropriate training provided to meet any new demand. If sufficient resourcing is not provided, then there is the potential to solve one problem (reduce cases going to tribunal) whilst creating another (underfunding leading to backlogs in ADR).

5.29 Reform opportunity U: withdrawing the option of statutory reviews in certain cases

[19] Use Alternative Dispute Resolution (ADR) to settle a tax dispute

5.30 Question 30: Would you have any concerns if HMRC were to withdraw the option of statutory review in some cases?

5.31 Yes –This legislation permits both taxpayers to request, and compliance officers to offer, an internal independent review within a permitted timeframe of the compliance officer's decision. This is an important second check of the initial compliance officer's reasoning and rationale for adopting a position, and to assess whether that thinking was correct. It also allows taxpayers the opportunity to give weight to arguments which may have been seen as being 'unheard' during the enquiry process. It is therefore an important safeguard against compliance officers driving through a decision which would otherwise not have stood up to scrutiny.

5.32 We do not support the withdrawal of access to a Statutory Review under any circumstances, as we see this as being an important, legal, taxpayer safeguard.

5.33 Reform opportunity V: Digital administration

5.34 Question 31: Are there other areas you think would benefit from alternative appeals channels (for example, digital)?

5.35 As a general comment on digitalisation, we believe the tax system should benefit both Government and taxpayers alike, leveraging digital technologies to streamline tax processes, enhance accuracy, and enable real-time data exchange between taxpayers and tax authorities.

The ATT and CIOT have developed a set of principles[20] which should act as the benchmark against which tax digitalisation must be measured. Compliance with these principles will ensure that the benefits of digitalisation will be realised, whereas failure to adhere to them could result in increased costs, poor implementation, unachieved policy goals, and a loss of trust in the tax system.

5.36 We acknowledge, accept and support Government's and HMRC's digitalisation goals and recognise that implemented correctly they can create an efficient and effective way of taxpayers staying connected with HMRC. However, it is essential that built into these aspirations are the capacity for conventional human contact where necessary (initiated by the taxpayer, agent or HMRC) to resolve issues more effectively for the benefit of taxpayers, the tax authority or both.

5.37 It is critical that HMRC build trust and credibility in their digital services by not introducing anything until the digital services which taxpayers will have to use have been thoroughly tested and are supported by guidance and available telephone support for users.

5.38 While it is understandable that HMRC focuses development on meeting the needs of the majority of users, as a Government department they ultimately need to be accessible to all users. HMRC must make provision in any new or reformed service or system for those who are digitally excluded. As already stated, we think that it is essential to build into the system the capacity for conventional human contact. However, we are definitely not advocating the construction of parallel digital and non-digital tracks for every process. What is needed is an effective AA/RAC-type service to get the taxpayer who is experiencing any issue to their destination in a timely, efficient, and user-friendly manner.

5.39 We acknowledge the support that HMRC provides through their Extra Support Team (EST) who are specially trained to assist those who might need extra help because of physical or cognitive difficulties or mental health conditions. This is exceedingly valuable. However, this is a small team and access to

[20] ATT and CIOT principles of tax digitalisation | The Association of Taxation Technicians

their support is necessarily, triaged through the various helplines to ensure the team is not overwhelmed. Any reforms following this Consultation could place the team under even greater pressure, so it is essential that the team are adequately resourced, staffed and trained to meet any increase in needs.

5.40 HMRC have introduced a digital appeal service for VAT late filing and late submission penalties, together with the PAYE penalty appeal process via the 'PAYE for employers' services. Although use of these online services is at an early stage, we would still recommend that HMRC obtain and evaluate taxpayer experiences of using them to establish whether this digitalised appeal format is simplifying and enhancing the 'customer experience'. If the results of that research are positive, then this would provide suitable support and justification for extending the digital appeal services for late filing and late submission penalties to other taxes and duties administered by HMRC.

5.41 HMRC's Digital Disclosure Service (DDS) is an online platform which enables both individuals and businesses to report any tax irregularities or errors that have not been previously declared to HMRC. The DDS offers more favourable terms than those that may be applicable in the event of an enquiry, so can provide a cost-effective way for taxpayers to bring their tax affairs up to date. The DDS does not allow additional information to be uploaded, and this creates a major concern for many agents who are uneasy that without this the taxpayer will not have made a full and complete disclosure. The enhanced DDS does allow for more freeform comments, but agents still prefer to make a paper disclosure where the full additional information can be provided and a full disclosure made.

5.42 HMRC could explore the use of interactive guidance to help support taxpayers understand their rights and obligations during and after a compliance intervention. This could include a taxpayer having the ability to enter the date of an assessment or appealable letter and pick the type of assessment or decision from a drop-down facility. The system would then provide details of what options are available and the date on which the action needed to be taken based on which option was chosen. This form of system could increase taxpayers understanding of the system and provide them with appropriate guidance.

6 Contact details

6.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact atttechnical@att.org.uk.

The Association of Taxation Technicians

7 Notes

7.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

7.2 Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government, and academia.

7.3 The Association has more than 9,800 members and Fellows together with over 7,000 students. Members and Fellows use the practising title of 'Taxation Technician' or ‘Taxation Technician (Fellow)’ and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.